REMARKS/ARGUMENTS

Applicant has previously deleted former Claims 1-21, and previously added Claims 22 - 42. Claims 43 and 44 have now been added. Claims 22-44 remain in the case.

The Examiner's rejection is based on a number of propositions with which the applicant takes issue.

Applicant's position is based on the proposition, which applicant believes is unquestionable, that a programmed computer is statutory subject matter. It is both a machine and a manufacture within the clear language of 35 USC 101.

The only exception, as discussed in the cases cited by the Examiner, appears to be the court- created doctrine that, even if an invention satisfies the language of 35 USC 101, it is still not statutory subject matter if the claim preempts a mathematical algorithm or other principle of nature. Because the invention involved in this case does not preempt or even involve a mathematical algorithm or other principle of nature, and merely recognizes a benefit to a specific computer file transfer from one speech recognition computer to another speech recognition computer, this court-

created exception is not relevant.

Thus, a computers involved in these claims are statutory subject matter themselves, and therefore, inventions that act upon them and make them more useful are also statutory subject matter.

FIRST, CONNECTION TO UNDERLYING STATUTORY SUBJECT MATTER.

First, the Examiner argues that "While the instant claim(s) recited a series of step(s) or act(s) to be performed, the claim(s) neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

APPLICANT'S POSITION:

First of all, the applicant argues that the present claims DO transform underlying subject matter, that is, the claimed invention transforms a computer (more specifically, the second computer) from a less trained to state to a more trained state, and, from a less efficient speech recognition state to a more efficient speech

recognition state. The claims specifically recite this transformation.

Second, the present inventions are positively tied to another statutory category that is they are positively tied to a computer, and, in fact, at least two computers. The claims specifically recite this connection between the invention and the computers.

There is no basis for the Examiner's proposition that this invention does not transform statutory subject matter (computers) and no basis for the Examiner's position that this invention is not tied to statutory subject matter (computers).

None of the cases cited by the Examiner provide any support for the proposition that a computer program or the use of a computer program to transfer the contents of a first computer to a second computer to improve the operation of the second computer, is not statutory subject matter. Clearly, that's sort of invention IS statutory subject matter.

SECOND, DEFICIENCY IN SPECIFICATION

Second, the Examiner argues that "Although, 22- 42 are directed toward a software

application that functions upon the first computer that uses a computer program, the specification only discloses software embodiments of the invention, which amounts to a computer program."

APPLICANT'S POSITION:

The Examiner appears to admit that the claims are expressly directed toward a software application that functions on the first computer. Thus it would seem that the claims clearly transform the underlying computer and/or are positively tied to computers. That relationship between the program and the computer appears to satisfy the requirement for a patentable process, as the Examiner has described. The Examiner tries to avoid this clear conclusion by saying that, regardless of what the claims say, the specification only discloses the software embodiments, and therefore, this limitation in the specification makes the claims nonstatutory.

First of all, the Examiner has offered no precedent for the proposition that deficiencies in the specification can negative the statutory subject matter question of claims. Whether a claim is directed to statutory subject matter or not, is determined by the claims themselves.

More importantly, the specification is full of description of the fact that this claimed invention is tied to computers and transforms computers.

For example, in the description of the figures, under the heading BRIEF DESCRIPTION OF THE DRAWINGS, beginning on page 5 of the specification, the specification describes the first four figures as representations of the video screens of computers upon which the invention is functioning. Clearly, the screens represent the visual focus of a first computer from which the voice model files are taken and a second computer to which the voice model files are copied. Not only does this specifically recite that the present invention is tied to at least two separate computers, but also specifically recites that the second computer is transformed by receiving the voice model files from the first computer.

Furthermore, the fact that this claimed invention is tied to computers and transforms computers is both implicit, inherent and completely obvious from the specification and from the ubiquitous recitation of the preferred embodiment of the invention as a computer program. A computer program by its nature is tied to a computer and transforms the computer.

Very simply stated, this invention involves taking material from a first computer and transferring it to a second computer, in order to improve the second computer. Thus the invention is not only tied to the computers but also transforms the second computer.

To eliminate any doubt that the specification clearly supports the claims and recites the connections between the invention and computers and the transformation of at least one of the computers by the invention, applicant has added a concise recitation of two embodiments of the invention, as new claims 43 and 44, and incorporated that specific description into the specification, with the same wording as new claims 43 and 44, in new paragraph 35.

There is no new matter in this amendment to specification.

Thus, it cannot be said that the specification does not explicitly support the claims, and, in fact, the other existing claims, and the claimed inventions' ties to the computers and the claimed inventions' transformation of at least one computer.

THIRD, COMPUTER PROGRAM CANNOT BE STATUTORY SUBJECT MATTER.

Third, the Examiner argues that "A computer program does not fall within one of the statutory classes of invention under 35 USC 101, therefore, claims 22 – 42 are directed toward a non-statutory subject matter."

APPLICANT'S POSITION:

This argument appears to be contradictory to the Examiner's first argument. As the Examiner and the case law clearly states, a computer program CAN BE statutory subject matter, for example, if it is either tied to statutory subject matter such as a computer or transforms statutory subject matter such as a computer. In this case, the computer program which is the subject of the present patent application is both tied to computers, and transforms at least one of the computers. Thus this general statement, by the Examiner, that computer programs cannot be statutory subject matter is simply unsupported by the law.

The only exception would be if the claims preempted a mathematical algorithm or principle of nature, an exception which the Examiner has not raised, in which is not present or relevant to these claims.

CONCLUSION

In view of the above amendments and comments, it appears that this case is now in condition for a Notice of Allowance. Such further and favorable action is requested.

Respectfully submitted,
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